IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/11/2002

CORAM

THE HON'BLE MR.JUSTICE A.KULASEKARAN

C.R.P. PD.No.1218 of 2002
and
C.M.P.No.10260 of 2002

B.Navaneethammal ..... Petitioner

-Vs-

Suleka Bi ..... Respondent

Civil Revision Petition against the order dated 5.10.2001 in M.P.No.199 of 2001 in R.C.O.P.No.989 of 1999 on the file of the XIII Small Causes Court, Chennai.

!For petitioner : Mr.V.R.Balasubramanian

^For respondent : Mr.M.Md.Ibrahim Ali.

:ORDER
Tenant is the revision petitioner. The respondent herein has filed R.C.O.P.No.989 of 1999 for eviction. Notice in the R.C.O.P. was served on the petitioner by way of affixture. On 15.9.1999, the Trial court has passed the ex parte decree against the petitioner herein.
2. It is the case of the petitioner that she has come to know about the ex parte order after receipt of notice in E.P.No.283 of 2000 and within seven days thereafter, she has filed M.P.No.199 of 2001 to condone the delay of 397 days in filing the petition to set aside the ex parte decree. The respondent herein has filed counter opposing the said application. After hearing both sides, the Trial Court has dismissed the said application by its order dated 5.10.2001 stating that the ex parte decree was passed on 3.9.1999, but, the petition was filed after the lapse of 510 days; that it was not proved by the petitioner that she was not served with the summon; that the application was filed to protract the proceedings. Hence, the present civil revision petition is filed under Article 227 of the Constitution of India.
3. Learned counsel appearing for the petitioner submitted that though the application to condone the delay was filed within seven days from the date of knowledge, however the petitioner has prayed for condoning the delay from the date of passing of the ex parte decree by way of abundant caution, indeed, the said application was filed within 30 days; that the Trial court failed to note that no summon was served on the petitioner, but, it was shown that service was completed by affixture, in fact no such affixture was effected as

defined in the Rules 1974 and prayed for setting aside the order passed by the Trial Court.

4. Learned counsel appearing for the respondent has submitted that once summon was served by way of affixture, it shall be deemed as duly served on the tenant and prayed for dismissal of the civil revision petition.

5. Point for consideration in this revision is whether the order passed by the Trial Court is sustainable in law or not.

6. Both sides have submitted that service was effected only by affixture made on 20.8.1999. It is not denied by the respondent that first summon was sent by court to the petitioner herein by registered post mentioning the wrong address which was returned on 25.5.1999.

7. Relevant provisions for service of summon are contemplated in Rule 26 of the Tamil Nadu Buildings (Lease & Rent Control) Rules, 1974 which reads as follows:-

"26. Service of summons-(1) Every summons issued under the Act on any person shall be served in any of the following ways namely:-

(a) by giving or tendering it to such person; or

(b) if such person is not found, by leaving it at his last known place of abode or business or by giving or tendering it to some adult member of his family; or

(c) if the address of such person is known to the Controller, the Appellate Authority or other authorised person, by sending it to him by registered post acknowledgment due; or

(d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business."

8. It is evident from the said provisions that before invoking clause (d) of Rule 26, i.e., affixture in the last known place, the court shall exhaust the clauses (a), (b) and (c) of Rule 26(1). In this case, admittedly, clauses (a), (b) and (c) were not followed. As rightly pointed out by the learned counsel appearing for the petitioner, the knowledge of ex parte decree was seven days prior to the date of filing the application to condone the delay. Indeed, before expiry of 30 days from the date of knowledge, the petitioner has filed the petition to condone the delay, however, by way of abundant caution, prayed for condoning the delay of 510 days as calculated by the Trial Court and 397 days as wrongly calculated by the petitioner. The above said facts are not disputed by the respondent.

9. When the rule contemplates necessary conditions for effecting service of summon and when it has not been followed, the court shall allow the petition to condone the delay or set aside the ex parte decree. In this case, the Trial Court failed to note that the relevant provisions of Rule 26 are not followed. The delay is properly explained by the petitioner herein. Hence, the order passed by the court below is set aside. The civil revision petition is allowed. No costs. Consequently, the connected C.M.P. is closed.

10. The learned counsel appearing for the respondent prayed this court to direct the Trial Court to dispose of the R.C.O.P. within a stipulated period as it is of the year 1999.

11. I feel that the said request is reasonable. Hence, I direct the Trial Court to dispose of the R.C.O.P. within a period of six months from the date of receipt of copy of this order.

Index: Yes

Internet: Yes

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To

The Registrar,
Court of Small Causes,
Chennai.